

<b>COMPLIANCE BOARD OPINION NO. 97-4</b>
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April 23, 1997

*Ms. Margaret Guchemand, President*  
*Mr. Tom Colonna, President*

The Open Meetings Compliance Board has considered your complaint of December 6, 1996, as supplemented in Ms. Guchemand's letter of January 16, 1997, concerning alleged violations of the Open Meetings Act by the Board of Trustees of the Community Colleges of Baltimore County. Your complaint alleges that documents revealed at open meetings on November 20, 1996, and January 13, 1997, suggest that unannounced secret meetings might have occurred prior to those dates.

In our opinion, the Board of Trustees did not violate the Open Meetings Act prior to its meetings on November 20 and January 13 meeting.

**I**

**Events Preceding November 20 Meeting**

Your complaint points out that, at a meeting of the Board of Trustees on November 20, 1996, the Board presented to the former chancellor a "memorandum of understanding" from the Board of Trustees. This memorandum, dated November 15, 1996, identified certain "areas of concern" about the operation of the colleges and the Board's policy determinations on those issues. For example, the document specified that tenure was to be abolished for all new employees. Your complaint suggests that, because the memorandum of understanding identifies both the chairperson and vice chairperson of the Board of Trustees in the memorandum's "from" line and is stated to be from the Board itself, the document might have been discussed in "one or more secret sessions prior to the [November 20] Board meeting ...."

In a timely response on behalf of the Board of Trustees, John E. Beverungen, Esquire, Assistant County Attorney, asserts that the memorandum was prepared by a single trustee. Although the document was distributed to each trustee and was subsequently edited by the chairperson and vice chairperson, it was never discussed at a Board meeting until November 20.

On these facts, the Compliance Board finds that the Act was not violated. The

Act applies only to a “meeting,” which occurs when a quorum of a public body has convened. §10-502(g) of the State Government Article. As the Attorney General has advised, “the Open Meetings Act does not apply to an exchange of paper, because such an exchange does not ‘convene a quorum of a public body’ and is therefore not a ‘meeting.’ In other words, because the Open Meetings Act does not address decision-making outside of a ‘meeting,’ it does not itself prohibit this method of conducting public business.” 81 *Opinions of the Attorney General* \_\_\_\_ (1996) [Opinion No. 96-016, at 3-4 (May 22, 1996)].

Until its November 20 meeting, the process by which the Board of Trustees considered the memorandum of understanding appears to have involved individual members separately reviewing the document, rather than collective review and discussion at a meeting. Therefore, the Act did not apply and was not violated.

## **II**

### **Events Preceding January 13 Meeting**

In Ms. Guchemand’s supplement of January 16 to the complaint, she suggested that the Board of Trustees likely had met in secret prior to its meeting on January 13, at which the Board of Trustees voted to terminate the contract of the former chancellor. Ms. Guchemand has drawn this inference from the fact that a press release distributed on January 13 announced the appointment of an interim chancellor and contained details about the new chancellor’s background. Ms. Guchemand suggested that the preparation for the succession in the chancellor’s office implies “that the Board had met in secret to vote, had scheduled [the interim chancellor’s] arrival, and had prepared the press release in advance of the [January 13] meeting ....”

After some delay, the Board of Trustees responded to this allegation. In essence, the Board of Trustees denied that any quorum had gathered prior to the January 13 meeting, either to arrange for the interim chancellor’s arrival or to prepare a press release. The choice of an interim chancellor was discussed by various Board members in separate conversations. The press release, like the memorandum of understanding, was prepared by members of the Board of Trustees without a meeting having ever been convened.

On these facts, the Compliance Board finds no violation.

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.  
Courtney McKeldin  
Tyler G. Webb